HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P. No. 1953 of 2005 S/S

Manveer Singh
Vs
State of Uttaranchal & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 22.12.2005

Initial of Judge

In the High Court of Uttaranchal at Nainital

Interim Relief Application No. 12307/2005

With

Writ Petition No. 1953 (S/S) of 2005

Manveer Singh S/o Late Vijendra Singh
R/o Village Harkishanpur
P.O. Allhapur, Tehsil Nagina
District Bijnore U.P. …… Petitioner.

Versus

1. State of Uttaranchal through The Secretary Basic Education Department, Dehradun.
2. Education Director (Basic) Uttaranchal, 2- Subhash Marg Dehradun.
3. Additional Education Director (Basic) Uttaranchal, 2-Subhash Marg Dehradun.
4. Zila Basic Shiksha Adhikari, District U.S. Nagar ……Respondents.

Sri Jitendra Chaudhary, learned counsel for the petitioner.
Sri Harendra Balwal, learned S.C. for the respondents.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed of issue for a writ of mandamus directing the respondent to give appointment to the petitioner on the post of Assistant Teacher in basic Education Department according to his qualification under Dying In Harness Rules.

Briefly stated the facts of the case are that Mr. vijednra Singh, the father of the petitioner has expired on 9-5-1988 while he was working as Assistant Teacher in Primary School, Jaspur, District Nainital. The petitioner has applied for appointment on Dying In Harness Rules. The mother of the petitioner applied on 10-6-1989 and 3-2-1991 and the petitioner himself applied on 20-9-2000. The grievance of the petitioner is that the said application has not yet been considered. There is an endorsement of the Basic Shiksha Adhikari also for consideration of the same, as will appear

from the letter dated 23-9-2000 set of Director (Basic) U.P., Lucknow. The same is quoted below:-

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mi;qDr fc"k;d Lo0 Jh fotsUnz flag lgk;d v/;kid ikFkfed fo|ky; uxj {ks= tlsj tuin m/kefl[g uxj esa dk;jr FkkA lsok esa jgrs gq;s fnukd 9-5-1988 dks mudh eR;q gks x;hA mudh ikfjokfjd fnukd 23 flrEcj 2000 dks esrd deZpkjh vkfJr d:Ik esa lgk;d v/;kid ikFkfed fo|ky; d in ij fu;qfDr gsrq vkosnu i= bl dk;kZy; esa izs"kr fd;k gS pfd Jh fotsUnz flag dh eR;q dks 5 o"kZ ls vf/kd dk le; O;rhr gks pqdk gSA vr% idj.k ij egksn; dh vuqefr vif{kr gSA

vr% Jh euohj flag iq= Lo0 Jh fotsUnz flag dk vkosnu i= ,oa leLr izkfrdkfjr lyXku dj vkidh lsok esa vuqefr fn;s tkus gsrq izs"kr fd;s tk jgs gSA

d`i;k vuqefr djus dh d`ik djsaA^^

Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, provides as under:-

5. "[Recruitment of a member of the family of the deceased] [Subs. By Noti. 6/XII/73-Ka-2-99 dated 20th January 1999, published in U.P. Gazette (Extra) Part-4 Section (Ka) dated 20th January 1999].

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central government or a State Government or a Corporation owned or controlled by the Central Government or a State Government,

one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purpose, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-

(i) fulfils the educational qualification prescribed for the post.

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant:

provided that where that State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death.

(3) [Ins. By Noti. 6/12-73-Ka-2-2001, dated 12th October, 2001 [Vide U.P. Recruitment of Department of Government Servants Dying in Harness (Sixth Amendment) Rules, 2001 (w.e.f. 12.10.2001] Each appointment under Sub-rule (1) should be under the condition that the person appointed under sub-rule (1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and where dependent of the above-said deceased Government servant immediately before his death.

So far as the compassionate appointment is concerned, it is well established that it has to be disposed of expeditiously in as much as the bread-earner of the family has already died. The

family has to be given support by appointment on compassionate ground. The Apex Court in the matter of Smt. Sushma Gosain and others vesus Union of India and others; (1984) 4 Supreme Court Cases 468 has held as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

The Division Bench of this Court in the matter of Naresh Kumar versus Union of India and others 2003 U.D., 167 has held as under:-

> *"The Apex Court in the case of State of U.P. and others vs. Paras Nath A.I.R. 1998 SC page 2612 in para-5 has held as under:-*
>
> *The purpose of providing employment to a dependent of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointment are permissible on compassionate grounds provided there are Rules providing for such appointment. The purposed is to provide immediate financial assistance to the family f the deceased government servant.*
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> *In the case the Dhalla Ram vs. Union of India AIR 1999 SC 564, the Hon'ble Supreme Court has held that appointment on compassionate ground is not method of recruitment, but is a facility to provide for immediate rehabilitation to the family in distress for relieving the*

dependent family members of the deceased employee from destitution."

A perusal of the record of the writ petition shows that immediately after the death of the bread earner the months has applied for appointment in the year 1989, thereafter the petitioner applied on 20-9-2000.

In the aforesaid circumstances the writ petition is allowed and the respondent No. 2 is directed to consider the appointment of the petitioner on compassionate ground within six weeks from the date of filing of certified copy of the order.

(Rajesh Tandon, J.)
22-12-2005

ISB